



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

**WAGGONER CARR
ATTORNEY GENERAL**

August 10, 1966

Honorable Ray A. Fowler
Assistant Commissioner
Coordinating Board
Texas College and University System
Austin, Texas

Opinion No. C-738

Re: Whether money in the Texas Opportunity Plan Fund in excess of the amount immediately necessary for student loans may be invested in obligations of agencies of the United States which are not unconditionally guaranteed by the United States.

Dear Mr. Fowler:

You have requested our opinion concerning whether money in the Texas Opportunity Plan Fund in excess of the amount immediately necessary for student loans may be invested in obligations of agencies of the United States which are not unconditionally guaranteed by the United States. You point out that not all direct obligations of agencies of the United States are unconditionally guaranteed by the United States, and that a difference in the amount of the return on the investment is effected thereby.

Investment of the funds in the Texas Opportunity Plan Fund in excess of the amount immediately needed for student loans is governed by Section 9 of Article II of Article 2654g, Vernon's Civil Statutes, which provides:

"All moneys standing to the credit of the Reserve portion of the Interest and Sinking Fund and any moneys in the Texas Opportunity Plan Fund in excess of the amount necessary

for student loans may be invested by the Board in direct obligations of the United States or its agencies or in other obligations unconditionally guaranteed by the United States. . . , except provided, however, that money in the Interest and Sinking Fund, except for that which is in the Reserve portion of such fund, may be invested only in direct obligations of or unconditionally guaranteed by the United States which are scheduled to mature prior to the date money must be available for use for its intended purpose. . . ."(Emphasis added).

This provision makes two separate authorizations. It clearly provides that money in the Interest and Sinking Fund, except for the Reserve portion thereof, can be invested only in direct obligations of the United States or those unconditionally guaranteed by the United States. However, investment of moneys in the Reserve portion of the Interest and Sinking Fund and "excess moneys" in the Texas Opportunity Plan Fund is not subject to the same restriction. An additional type of investment is authorized for these funds, viz. direct obligations of agencies of the United States not unconditionally guaranteed by the United States. This is evident from the difference in the language itself and is clearly implied by the fact that had the legislature intended no difference in the permissible scope of the investment of these funds then there would have been no reason to make separate provisions therefor.

Therefore, we are of the opinion that the Coordinating Board has the authority to invest moneys in the Texas Opportunity Plan Fund, in excess of the amount necessary for student loans in (1) direct obligations of the United States, (2) direct obligations of agencies of the United States, or (3) in obligations which are unconditionally guaranteed by the United States. The decision as to the type of investment, of course, lies within the sound discretion of the Coordinating Board.

Honorable Ray Fowler, page 3, (C-738)

SUMMARY

Moneys of the Texas Opportunity Plan Fund which are not immediately needed for student loans may be invested in direct obligations of agencies of the United States which are not unconditionally guaranteed by the United States.

Yours very truly,

WAGGONER CARR
Attorney General of Texas

By 
JOHN W. FAINTER, JR.
Assistant Attorney General

JWF:vg

APPROVED:
OPINION COMMITTEE

W. O. Shultz, Chairman
John Reeves
Pat Bailey
Roy Johnson
Paul Phy

APPROVED FOR THE ATTORNEY GENERAL
By: T. B. Wright